



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201211034

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 22 2011

Uniform Issue List: 408.03-00

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Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXX
Taxpayer B	= XXXXXXXXXXXXXXXXXXXX
Financial Institution R	= XXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Amount A	= XXXXXXXXXXXXXXXXXXXX
Court B	= XXXXXXXXXXXXXXXXXXXX
State M	= XXXXXXXXXXXXXXXXXXXX
Form A	= XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXX
Date 4	= XXXXXXXXXXXXXXXXXXXX
Date 5	= XXXXXXXXXXXXXXXXXXXX
Date 6	= XXXXXXXXXXXXXXXXXXXX
Year 1	= XXXXXXXXXXXXXXXXXXXX
Year 2	= XXXXXXXXXXXXXXXXXXXX

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Page 2

Dear XXXX:

This letter is in response to your request for a letter ruling dated December 20, 2010, as supplemented by additional correspondence dated July 14, 2011, and July 20, 2011, submitted by your authorized representative on your behalf, in which you request a ruling under section 408(d) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age , represents that Taxpayer B, whose date of birth was Date 1, died on Date 2, having attained age 70 1/2. Taxpayer A, Taxpayer B's surviving spouse, was designated the personal representative and the sole beneficiary of his estate. At his death, Taxpayer B maintained an individual retirement account, IRA X, with Financial Institution R. Form A, the beneficiary designation form for IRA X, designated as beneficiary, Taxpayer A as trustee of a testamentary trust under the Will of Taxpayer B dated Date 3 (Year 1 Will). The value of IRA X on Date 2 was Amount A. No distributions have been made from IRA X.

Taxpayer B revised the Year 1 Will on Date 4 (Year 2 Will) to eliminate the testamentary trust and to pass his entire estate to Taxpayer A free and clear of the trust. The revision updated and revoked the Year 1 Will in its entirety, but did not update the IRA X beneficiary designation form which listed Taxpayer A as beneficiary of the testamentary trust. Under the Year 2 Will, Taxpayer A was the sole personal representative of Taxpayer B's estate and was the sole beneficiary of IRA X.

Article VIII, section 4, of IRA X's Custodian Agreement provides that if no designation is in effect at a Depositor's death, the Beneficiary of the Depositor's custodial account shall be deemed to be the Depositor's estate.

On Date 5, Taxpayer A was appointed as the Personal Representative of Taxpayer B's estate and has submitted Letters of Appointment issued by Court B located in State M. On Date 6, all of Taxpayer B's assets were assigned to Taxpayer A, including IRA X. As Taxpayer B's surviving spouse Taxpayer A intends that IRA X be transferred directly to her IRA account with Financial Institution R in a trustee-to-trustee transfer.

Based on the facts and representations, you request the following ruling that as surviving spouse and sole beneficiary of Taxpayer B's estate you may, in a trustee-to-trustee transfer, roll over the proceeds from IRA X within the meaning of Code section 408(d)(3) of the Code; and the trustee-to-trustee transfer will be exempt from the withholding requirements of section 3405(c)(2) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B), the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3), a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(d)(3)(E) of the Code provides, generally, that section 408(d) does not apply to any amount required to be distributed pursuant to section 408(a)(6).

On April 17, 2002, Final Income Tax Regulations ("Regulations") were published in the Federal Register with respect to Code sections 401(a)(9) and 408(a)(6) (see also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 Question and Answer 5 of the regulations provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust or estate is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust or estate.

The Preamble to the Regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from a deceased spouse's IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

Section 1.401(a)(31)-1 of the Regulations, Question and Answer Q-5 provides that an eligible rollover that is paid to an eligible retirement plan in a direct rollover is not currently includible in a distributee's gross income under Code section 402(c) and is exempt from the 20-percent withholding imposed under section 3405(c)(2) of the Code.

With respect to your ruling request, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., an estate or trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse would not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

In the present case, Taxpayer B's interest in IRA X did not pass to the trust that was listed on the IRA beneficiary designation because the Year 2 Will revoked the trust. Thus, in the absence of a designated beneficiary the IRA X account balance remaining at Taxpayer B's death became payable to his estate. Because Taxpayer A was Executrix and sole beneficiary of the estate with the right to direct any and all amounts from the estate without restriction, Taxpayer A could have demanded, in writing, that the full IRA X balance be paid to her. Under this set of circumstances, no third party could have prevented the surviving spouse from rolling over, or transferring, by means of a trustee-to-trustee transfer, the full amount standing in IRA X into an IRA set up and maintained in the surviving spouse's name.

Under this set of circumstances, the general rule set forth above will not apply. Therefore, we conclude as follows with respect to your ruling request that as surviving spouse, and sole beneficiary of Taxpayer B's estate you may either (1)

by means of a trustee-to-trustee transfer, transfer the proceeds from IRA X into an IRA set up and maintained in your name, or (2) take a distribution of the proceeds of IRA X and rollover such proceeds into an IRA set up and maintained in your name as long as the rollover transaction occurs no later than the 60th day from the date said proceeds of IRA X are distributed. In either case, the proceeds in the trustee-to-trustee transfer or the timely rollover will be exempt from the withholding requirements under section 3405(c)(2) of the Code.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.


This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact

Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,



Laura B. Warshawsky, Manager
Employee Plans, Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose